



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 8259232

Date: JULY 21, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a teacher, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and that she had not had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for EB-2 classification and a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by “[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner presented an August 2013 diploma indicating that she received a bachelor's degree in education from [REDACTED] in Brazil. In addition, she submitted two certificates from [REDACTED] for completing “the [REDACTED] Graduation Program in Psychopedagogy” (December 2016) and “the [REDACTED] Graduation Program in Educational Management” (August 2017). While she provided her school transcripts from [REDACTED], the Petitioner did not provide an academic credentials evaluation to establish her diploma's equivalency to a U.S. baccalaureate degree, or her certificates' equivalency to a U.S. advanced degree. See 8 C.F.R. § 204.5(k)(3)(i)(A) and (B). Furthermore, the record reflects that she received the aforementioned bachelor's degree on August 5,

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

2013. Even if the Petitioner had provided a credential evaluation indicating that her bachelor's degree from [] is equivalent to a U.S. baccalaureate degree, she has not demonstrated at least five years of progressive post-baccalaureate experience in her specialty at the time she filed the petition.⁴ Accordingly, the Petitioner has not established that she qualifies as a member of the professions holding an advanced degree.

B. Exceptional Ability

The Petitioner asserted that she meets at least three of the regulatory criteria for classification as an individual of exceptional ability. In denying the petition, the Director determined that the Petitioner fulfilled only the membership criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E).

On appeal, the Petitioner does not specifically identify any erroneous conclusion of law or statement of fact relating to the Director's exceptional ability determination. After reviewing all of the evidence, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A).

The Petitioner's diploma, certificates, and academic transcripts from [] are sufficient to meet this regulatory criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

In her October 2017 letter accompanying the petition, the Petitioner indicated that she was "submitting no evidence for this category."

A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C).

The Petitioner's October 2017 letter accompanying the petition stated that she was "submitting no evidence for this category."

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

The Petitioner submitted her 2016 income tax return from Brazil indicating that she received R\$19,336.85 as a primary school teacher employed by the [] State Government. In addition,

⁴ The Form I-140 was filed on November 17, 2017. With respect to the Petitioner's five years of progressive post-baccalaureate experience in her specialty, she must demonstrate such experience at the time of filing. See 8 C.F.R. § 103.2(b)(1).

she offered salary information from “Salario BR” for educators in Brazil from March 2018 until March 2019. The Director noted that these “salary comparisons are not during the same time period.” To satisfy this criterion, the evidence must show that an individual has commanded a salary or remuneration for services that is indicative of her claimed exceptional ability relative to others working in the field.⁵ Here, the Petitioner has not offered documentation showing that her earnings are indicative of exceptional ability relative to others in her field during the same time period. Based on the foregoing, we agree with the Director that the Petitioner has not demonstrated that she meets this regulatory criterion.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E).

The record supports the Director’s determination that the Petitioner’s membership in the Union of Formal Education Teachers of the State of [REDACTED] meets this criterion.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F).

As evidence for this criterion, the Petitioner provided recommendation letters from various individuals discussing her education and work experience, but this evidence was not sufficient to demonstrate “recognition for achievements and significant contributions to the industry or field.” For example, the record includes letters from [REDACTED] (a human resources manager with [REDACTED]) and [REDACTED] (a professor at [REDACTED]) describing the Petitioner’s duties, responsibilities, and personal qualities, but they did not offer specific examples of how her work was recognized as significant contributions to the field of education. In addition, the Petitioner submitted papers she authored, entitled [REDACTED] [REDACTED] and [REDACTED]. The record, however, does not include supporting evidence demonstrating that these papers represent significant contributions to the industry or field.

In response to the Director’s request for evidence, the Petitioner provided April 2019 letters from the [REDACTED] and the [REDACTED] discussing her work for those organizations as a “teacher’s aide” and an “assistant teacher” beginning in 2018. We note that the Petitioner began working for [REDACTED] and [REDACTED] after she filed the petition. Eligibility, however, must be established at the time of filing. See 8 C.F.R. § 103.2(b)(1). Without sufficient evidence demonstrating that the Petitioner has been recognized for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations, she has not established that she meets this criterion.

For the reasons set forth above, the evidence does not establish that the Petitioner satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification.

⁵ See USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 21* (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda>.

C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. For the reasons discussed below, we find the Petitioner has not demonstrated eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that she intends to continue her work "in the area of education, mainly working within the special education sector." She further stated: "I have spent the majority of my career working within schools and development facilities, where I have developed specialized experiences in the areas of teaching, interacting with children with special needs, communicating with deaf or hard of hearing children, and partnering with parents, teachers, and administrators to achieve the best results for the children." In addition, the Petitioner noted that she is currently working as a teacher's aide at [REDACTED]⁶

The Petitioner explained that her proposed endeavor involves developing lesson plans that encourage her students "to take the initiative to solve problems and pursue their own educational interests. Furthermore, she helps children process problem solving skills, to help them think, investigate, and ask questions as part of the educational process." Additionally, she noted that her proposed work is aimed at "supporting and increasing communication abilities for the preschoolers in verbal language, sign language, speech, and other alternative forms of communication. Finally, [the Petitioner] also works with children to teach them language, communication, motor, and social skills."

The record includes IBISWorld Industry Reports for "Child Education & Development Center Franchises in the U.S" and "Education Consultants in the U.S." The "Child Education & Development Center Franchises in the U.S" report indicated that "declining unemployment will foster greater demand from working parents" and that "rising interest in early education is growing demand for the industry's services." Likewise, the "Education Consultants in the U.S" report noted that "operators have benefited from increased demand for postsecondary education" and that "consumer wealth has enabled operators to raise consulting rates, which has put upward pressure on margins and revenue."

Furthermore, the record contains information about preschool teachers, the increasing demand for early childhood education, hearing loss, the value of education in fostering economic prosperity, the size of the U.S education market, the hearing impaired population in the United States, the increase in deaf-owned businesses, education's contribution to economic growth, challenges faced by early childhood educators, and the effect of education on Brazil's economic development. In addition, the

⁶ The Petitioner provided an April 2019 letter from [REDACTED] stating that she has been employed there as a full-time teacher's aide since September 2018. This letter indicates that the Petitioner's work at [REDACTED] involves "helping implement classroom curriculums, supervising children during play time, providing language accessibility and exposure, setting up and leading interactive classroom activities, supporting therapists during their work with the students, and other specific projects, as directed. [The Petitioner] works with two other education professionals, and she teaches children aged 2-5 years old." As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her current position to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

Petitioner provided articles discussing the U.S. early childhood education market, the effects of early education investment on economic growth, the shortage of deaf education teachers in the United States, the economic value of effective teachers compared to their less effective counterparts, gains in school readiness due to early childhood education, the economic cost of deafness, and education's influence on early childhood development. The record therefore shows that the Petitioner's proposed endeavor aimed at teaching students with special needs has substantial merit.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

The Petitioner argues on appeal that "education is key to creating economic drivers" and that "early childhood development is crucial for creating highly profitable contributors to society." In addition, she asserts that children who participate in prekindergarten childhood development programs are "less likely to utilize welfare services, less likely to engage in criminal activity, and are more likely to enter the labor force with the ability to garner higher incomes." She further contends that her proposed endeavor "generates direct consequences involving improved economies, improved societies, decreased crime rates, and a decrease in the drain of resources from governments on all levels."

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. In the present matter, the Petitioner's evidence is insufficient to show that her proposed work has broader implications for her field, as opposed to being limited to the students at the preschool where she intends to teach. While we acknowledge the merits of her work to create a positive learning environment and improve her students' language and communication skills, the record does not demonstrate that the Petitioner's instructional activities offer benefits that extend beyond her school to impact the field of early childhood education or U.S. economy more broadly. Likewise, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

In addition, while the Petitioner offered an article indicating that the United States faces a shortage of deaf education teachers, this reported shortage does not render the work of an individual teacher nationally important under the *Dhanasar* framework. The U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States. In general, the value of qualified teachers to U.S. educational initiatives is collective, and the Petitioner has not shown that her proposed work stands to have wider implications in the field of special education.

Furthermore, while the Petitioner asserted that her proposed work will contribute to a stronger U.S. economy by decreasing her students' future utilization of welfare services, reducing their criminal activity, and increasing their workforce participation, she has not demonstrated that her undertaking has implications beyond the preschoolers under her tutelage. Nor has the Petitioner shown that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from her teaching activities would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not established that she satisfies the regulatory requirements for classification as a member of the professions holding degree or as an individual of exceptional ability. Furthermore, as the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.